



IN THE UNITED STATES DISTRICT COURT

For the Southern District of California

SECURITIES AND EXCHANGE
COMMISSION
Plaintiff,

v.

JAMES E. FRANKLIN,
Defendant.

Case No. 02cv84 DMS (RBB)

**FINAL CONSTITUTIONAL SUPPLEMENT IN SUPPORT
OF DEFENDANT'S MOTION TO VACATE JUDGMENT
UNDER RULE 60(b)(5) AND (6)**

TO THE HONORABLE COURT:

1. Defendant James E. Franklin respectfully submits this final supplemental memorandum in support of his pending motion for relief under Federal Rule of Civil Procedure 60(b). This supplement raises additional **constitutional grounds** that independently justify full vacatur of the judgment and permanent penny stock bar entered in this case.

I. Reputational Liberty Interest (Fifth Amendment)

2. Continued enforcement of the judgment and penny stock bar violates Mr. Franklin's protected liberty interest in his **reputation and ability to pursue a lawful profession**, as recognized in *Paul v. Davis*, 424 U.S. 693 (1976). The bar:
 - Labels Mr. Franklin as permanently unfit without ongoing justification,

- Results in professional blacklisting (see **Exhibit K**, Chase & Citibank closures),
- Occurs absent any victim loss, scienter, or trading.

3. Such a permanent designation **without present justification** infringes liberty interests without a compelling government need.

II. Procedural and Substantive Due Process Violations

4. Mr. Franklin was:

- **Never issued a Wells notice**, despite SEC custom and internal guidance,
- Wrongly included in a 2023 SEC complaint later **dismissed following sanctions**,
- Told by the SEC's own enforcement attorney:

"I'm clear you had nothing to do with this matter."

5. The **selective and retaliatory enforcement** path, paired with ignored whistleblower efforts, violates the Fifth Amendment's guarantee of fairness and rational basis for government action.

III. Excessive Fines Clause (Eighth Amendment)

6. The permanent bar, now in effect for over two decades:

- Was not proportionate to any loss or proven fraud,
- Was imposed despite no trading, no profit, and no harm,
- Functions **more as punishment than regulation**.

7. As clarified in *Austin v. United States*, 509 U.S. 602 (1993), civil penalties that are punitive in effect may violate the Eighth Amendment. Here, the bar has become a **life-altering punishment**, not a civil remedy.

IV. Structural Constitutional Concerns After *Loper Bright* and *Axon*

8. Following *Loper Bright v. Raimondo* and *Axon Enterprise v. FTC*, courts are no longer required to defer to agency interpretations of law. This case reflects a judgment built on now-discredited assumptions — including:

- Overbroad readings of securities “fraud,”
- Agency overreach without judicial review,
- An indefinite restraint based solely on administrative enforcement.

9. Under current doctrine, such agency-imposed bars — especially permanent ones — must be scrutinized under Article III and separation-of-powers principles.

V. Conclusion

10. The ongoing enforcement of this judgment, in light of:

- Government misconduct,
- Constitutional violations, and
- The evolution of federal law,

...is no longer just or lawful. For these additional reasons, Mr. Franklin respectfully requests that this Court vacate the judgment and bar under Rule 60(b)(5) and (6).

Respectfully submitted,

Dated: May 9th, 2025



James E. Franklin, Pro Se
1212 H Street, #125
Ramona, CA 92065
jayvonfrank@gmail.com

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CERTIFICATE OF MAILING

I, **James E. Franklin**, declare that on **May 9th, 2025**, I caused true and correct copies of the following document:

- 1. Final Constitutional Supplement to Motion to Vacate Judgment**
- 2. A Corrected Motion for Leave to File Electronically placed in the United States mail, with first-class postage prepaid, properly addressed as follows:**

Clerk of the Court

U.S. District Court – Southern District of California
333 West Broadway, Suite 420
San Diego, CA 92101

James P. Connor, Esq.

Securities and Exchange Commission
Los Angeles Regional Office
444 S. Flower Street, Suite 900
Los Angeles, CA 90071
Email: connorja@sec.gov (*copy also sent by email as courtesy*)

Department of Justice – Civil Division

Federal Programs Branch
1100 L Street NW
Washington, DC 20005

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of May 2025


James E. Franklin

Defendant, Pro Se

1212 H Street, #125

Ramona, CA 92065

720-771-0140

jayvonfrank@gmail.com